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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2022-0073]

RIN 1625-AA00

Special Local Regulations; Annual Events in Captain of the Port Delaware Bay Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish special local regulations for four annual marine events in the Captain of the Port (COTP), Delaware Bay Zone. This action is necessary to protect participants, spectators, and vessels from the hazards associated with the varying types of marine events. This proposed rulemaking would prohibit persons and vessels from being in the regulated areas during the enforcement period unless authorized by the COTP or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2022-0073 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email MST1 Jennifer Padilla, Waterways Management Division, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271-4889, email Jennifer.l.padilla@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

Marine events are held on a recurring basis on the navigable waters within the Captain of the Port, Delaware Bay Zone. Historically, the Coast Guard established annual temporary final regulations for each of these recurring events.

This proposed rule would consistently inform the public in a timely manner through permanent publication in Title 33 of the Code of Federal Regulations. This proposed rule would add recurring marine events requiring a special local regulation to 33 CFR 100.501 Table 1 to Paragraph (i)(1) Sector Delaware Bay COTP Zone.

By establishing permanent regulations containing these marine events, the Coast Guard would eliminate the need to establish temporary rules for events that occur on an annual basis and thereby limit the costs associated with cumulative regulations. Adding descriptions of these marine events and their timeframes to the CFR would provide

greater notice to the public about the reoccurring events and better meet the Coast Guard's intended purpose of ensuring safety during these events. The Coast Guard proposes this rulemaking under authority in 46 U.S.C. 70034. This proposed rulemaking would prohibit persons and vessels from being in the regulated areas during an enforcement period unless authorized by the COTP or a designated representative. We invite your comments on this proposed rulemaking.

III. Discussion of Proposed Rule

The Coast Guard is proposing to add four reoccurring special local regulations for annual marine events in the Captain of the Port Delaware Bay to 33 CFR 100.501 in Table 1 to Paragraph (i)(1). The Coast Guard will publish annual notice of the exact dates and times of the effective periods of the regulations. For each event, the notices will also provide the geographical description of each regulated area and other pertinent details concerning the nature of the events. This proposed rule is necessary to protect participants, spectators, and vessels from the hazards associated with the varying types of marine events. During the enforcement periods of these special local regulations, non-participant persons or vessels would be prohibited from entering into, remaining within, transiting through, or anchoring in the regulated area unless authorized by the Captain of the Port Delaware Bay or a designated representative of the Captain of the Port. The regulatory text we are proposing appears at the end of this document.

Below is a description of the four reoccurring marine events we propose to add to Table 1 to Paragraph (i)(1) in 100.501.

1. Stockton Boat Race.

This marine event would occur one weekend in March or April annually. The

event would be in Atlantic City, NJ, where the following area makes up the regulated area: All navigable waters of the New Jersey Intracoastal Waterway in Atlantic City, NJ, within the polygon bounded by the following: originating on the southwest portion at approximate position latitude 39°20'57" N., longitude 074°27'59" W.; thence northeasterly along the shoreline to latitude 39°21'35" N., longitude 074°27'06" W.; thence east across the mouth of Beach Thorofare to the shoreline at latitude 39°21'41" N., longitude 074°26'55" W.; thence east along the shoreline to latitude 39°21'42" N., longitude 074°26'51" W.; thence southeast across the New Jersey Intracoastal Waterway to the shoreline at latitude 39°21'43" N., longitude 074°26'41" W.; thence southwest along the shoreline to approximate position latitude 39°20'55" N., longitude 074°27'57" W.; thence north to the point of origin. The sponsor is Stockton University.

2. Escape the Cape Swim.

This marine event would take place on one Saturday or Sunday in June. The regulated area would be in Lower Township, NJ in the following area: All navigable waters of the Delaware Bay in Lower Township, NJ, bounded by a line drawn from: latitude 39°0'57" N, longitude 074°56'56" W in Villas, NJ, thence west to latitude 39°00'59"N, longitude 074°57'15"W, thence south to latitude 38°58'08"N, longitude 074°58'11"W, thence east to latitude 38°58'04" N, longitude 074°57'52" W in North Cape May, NJ, thence north along the shoreline to the point of origin. The sponsor is DelMoSports.

3. Around the Island Paddle.

This marine event would occur on one Saturday or Sunday in June, July or August. The proposed regulated area location is in Cape May County, NJ. The

following area would be a moving regulated area: All waters within 50 yards in front of the lead safety vessel preceding the first event participants, to 50 yards behind the safety vessel trailing the last event participants, and 100 yards on either side of participant and safety vessels during the event. The regulated area will move with the safety vessels and participants as they transit the waters east through Cape May Harbor, south through Cape May Inlet, west through the Atlantic Ocean, north through the Delaware Bay, then east through Cape May Canal, and terminate at the Lost Fishermen's Memorial in Cape May Harbor. The regulated area will move at the pace of event patrol vessels and participants. The sponsor is the Desatnick Foundation.

4. Manasquan Inlet Intracoastal Tug.

This marine event would occur on one Saturday or Sunday in September or October. The location would be Manasquan Inlet, NJ. The following area would make up the regulated area: all waters of Manasquan Inlet extending 400 feet from either side of the rope located between approximate locations latitude 40°06'09"N, longitude 74°02'08"W and latitude 40°06'14"N, longitude 74°02'08"W. The sponsor is the Borough of Manasquan.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits

of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, scope, duration, and historical data concerning the scope and potential impact of these marine events. The special local regulation areas within this proposed rule have been enforced on an annual basis through individual temporary final regulations through temporary regulations. The regulated areas would be enforced in limited areas on six days out of the year, usually for only a few hours on those days. Specifically, the Manasquan Inlet Intracoastal Tug often schedules breaks during the event to temporarily let vessels pass through the inlet waterway entrance. Vessels will be able to contact the COTP for permission to transit the regulated areas or instructions for safely transiting around the area during enforcement periods.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the regulated areas may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 (Federalism), if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and

have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not

individually or cumulatively have a significant effect on the human environment. This proposed rule involves special local regulations at various locations and at various times to maintain the safety of event participants, spectators, and transiting vessel traffic. Normally such actions are categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2022-0073 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it.

Then click on the **Comment** option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100 - SAFETY OF LIFE ON NAVIGABLE WATERS¹. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05-1.

2. In § 100.501, amend Table 1 to Paragraph (i)(1) by adding the following events after the last entry to read as follows:

§ 100.501 Special Local Regulations; Marine Events Within the Fifth Coast Guard District.

******* Table 1 to Paragraph (i)(1)**

Event	Regulated Area	Enforcement Period(s) ¹	Sponsor

Stockton Boat Race	All navigable waters of the New Jersey Intracoastal Waterway in Atlantic City, NJ, within the polygon bounded by the following: originating on the southwest portion at approximate position latitude 39°20'57" N., longitude 074°27'59" W.; thence northeasterly along the shoreline to latitude 39°21'35" N., longitude 074°27'06" W.; thence east across the mouth of Beach Thorofare to the shoreline at latitude 39°21'41" N., longitude 074°26'55" W.; thence east along the shoreline to latitude 39°21'42"N., longitude 074°26'51" W.; thence southeast across the New Jersey Intracoastal Waterway to	One weekend in March or April	Stockton University

	the shoreline at latitude 39°21'43" N., longitude 074°26'41" W.; thence southwest along the shoreline to approximate position latitude 39°20'55" N., longitude 074°27'57" W.; thence north to the point of origin.		
Escape the Cape Swim	All navigable waters of the Delaware Bay in Lower Township, NJ, bounded by a line drawn from: latitude 39°0'57" N, longitude 074°56'56" W in Villas, NJ, thence west to latitude 39°00'59"N, longitude 074°57'15"W, thence south to latitude 38°58'08"N, longitude 074°58'11"W, thence east to latitude 38°58'04" N, longitude 074°57'52" W in North Cape May, NJ, thence north along the shoreline to the point of origin.	One Saturday or Sunday in June	DelMoSports
Around the Island Paddle	All waters within 50 yards in front of the lead safety vessel preceding the first event participants, to 50 yards behind the safety vessel trailing the last event participants, and 100 yards on either side of participant and safety vessels during the event. The regulated area will move with the safety vessels and participants as they transit the waters east through Cape May	One Saturday or Sunday in June, July or August	Desatnick Foundation

	Harbor, south through Cape May Inlet, west through the Atlantic Ocean, north through the Delaware Bay, then east through Cape May Canal, and terminate at the Lost Fishermen's Memorial in Cape May Harbor. The regulated area will move at the pace of event patrol vessels and participants.		
Manasquan Inlet Intracoastal Tug	All waters of Manasquan Inlet extending 400 feet from either side of the rope located between approximate locations latitude 40°06'09"N, longitude 74°02'08"W and latitude 40°06'14"N, longitude 74°02'08"W.	One Saturday or Sunday in September or October	Borough of Manasquan

¹ As noted, the enforcement dates and times for each of the listed events in this table are subject to change. In the event of a change, or for enforcement periods listed that do not allow a specific date or dates to be determined, the Captain of the Port will provide notice to the public by publishing a Notice of Enforcement in the Federal Register, as well as, issuing a Broadcast Notice to Mariner.

Dated: February 10, 2022.

Leon McClain, Jr.,

Captain, U. S. Coast Guard,

Alternate Captain of the Port, Delaware Bay.

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